

REMARKS/ARGUMENTS

Favorable consideration of this application in light of the following discussion is respectfully requested.

Claims 7, 13, 19 and 20 are pending in the application, with Claims 8-12 and 14-18 cancelled, Claims 7 and 13 amended, and Claim 19-20 added by the present amendment.

In the outstanding Office Action, Claims 7-18 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Nakamura et al. (U.S. Patent No. 5,740,168) in view of Hamalainen (U.S. Patent No. 6,148,209).

Applicants note the present application is the subject of a Petition to Make Special. Thus, Applicants request expedited handling of this application per MPEP § 708.02(VIII).

Applicants acknowledge with appreciation the personal interview between the Examiner, the Examiner's supervisor, and Applicants' representatives on January 19, 2006 regarding co-pending application 10/796,092. As discussed during the interview, independent Claims 7 and 13 are amended to clarify that the completion message is sent from the mobile to a base station or a base station controller as disclosed in Applicants' originally filed specification.¹ New Claims 19-20 substantially correspond to amended Claims 7 and 13. No new matter is added.

Briefly recapitulating, independent Claims 7, 13 and 19-20 are directed to a radio communication method and corresponding radio communication system employing CDMA (Code Division Multiple Access) for radio access and providing multi-rate transmission. In particular, the method of Claim 19 includes transmitting code information by message from the base station controller to one of the plurality of base stations; and receiving a completion message from the one of a plurality of mobile stations to indicate completion of a step of switching from a first code to a second code at the one of the plurality of mobile stations.

¹ Specification, page 26, line 23 through page 29, line 29.

The code information is configured to enable the one of the plurality of base stations to transmit timing information by message to the one of the plurality of base stations and to switch from the first code to the second code at both the one of the plurality of base stations and the one of said plurality of mobile stations based on the timing information and code information, and the timing information includes an integer representing a frame at which the first code is switched to the second code. The invention ensures accurate synchronization of the base station and mobile.²

Nakamura describes a method for code switching, including the transmission of a timing signal from a base station to a mobile station.³ However, Nakamura does not disclose or suggest “receiving a completion message from the one of a plurality of mobile stations to indicate completion of a step of switching from a first code to a second code at the one of the plurality of mobile stations.” As noted during the interview and as acknowledged by the Examiners, Nakamura only discloses registering the completion of switching from one code to another code in an internal (not external) controller.⁴

Additionally, because Nakamura is explicit that an indication of switching completion is merely stored internally and is not sent from the mobile to the base station, Applicants submit that Nakamura teaches away from Applicants’ claimed feature of receiving a completion message from the one of a plurality of mobile stations to indicate completion of a step of switching from a first code to a second code at the one of the plurality of mobile stations. Thus, Applicants submit that any combination that modifies the internal registration of Nakamura to include the receiving a completion message from a mobile is improper.

Furthermore, Nakamura does not disclose or suggest Applicants’ claimed base station controlling apparatus. That is, Nakamura only discloses a base station and a mobile station.

² Specification, paragraphs 121-128.

³ Nakamura, Figures 420B and 25.

⁴ Nakamura column 7, lines 4-15.

Also during the interview, U.S. Patent No. 6,148,209 to Hamalainen was discussed. While Hamalainen was not of record in the present application at the time of the interview, Hamalainen had been cited in Applicants' copending application 10/796,090. During the interview, Applicants' representatives noted that neither Hamalainen nor Nakamura disclose or suggest receiving [at a base station controlling apparatus] a completion message from the one of a plurality of mobile stations to indicate completion of a step of switching from a first code to a second code at the one of the plurality of mobile stations. As noted above and during the interview, Nakamura only discloses registering the completion of switching from one code to another code by the base station and the mobile station in respective internal controllers.⁵

As noted above, because Nakamura is explicit that a completion message is not sent from the mobile to the base station, Applicants submit that Nakamura teaches away from Applicants' claimed feature of "receiving a completion message from the one of a plurality of mobile stations to indicate completion of a step of switching from a first code to a second code at the one of the plurality of mobile stations." Thus, Applicants submit that any combination that modifies the internal registration of Nakamura to include the transmission of a completion message from a mobile to a base station is improper.

Furthermore, as discussed during the interview, Hamalainen does not disclose or suggest sending a code switching completion message of any kind, let alone a sending a code switching message from a mobile station to a base station or a base station controlling apparatus. Hamalainen only describes the sending of a time slot assignment acknowledgement message.⁶ Hamalainen makes no reference to switching of codes or the reporting of a completed code switching. Applicants submit that equating the time slot assignment acknowledgement message of Hamalainen with Applicants' claimed code

⁵ Nakamura column 7, lines 4-15.

⁶ Hamalainen column 7, lines 20-26.

switching completion message is an improper hindsight reconstruction of Applicants' claimed invention. Thus, assuming *arguendo* that the combination Nakamura and Hamalainen is proper, the combination of Nakamura and Hamalainen does not disclose or suggest Applicants' claimed feature of receiving a completion message from the one of a plurality of mobile stations to indicate completion of a step of switching from a first code to a second code at the one of the plurality of mobile stations.

Furthermore, like Nakamura, Hamalainen does not disclose or suggest Applicants' claimed "timing information including *an integer representing a frame* at which the first code is switched to the second code."

Finally, like Nakamura, Hamalainen does not disclose or suggest Applicants' claimed base station controlling apparatus. That is, Hamalainen only discloses a base station and a mobile station.

MPEP §706.02(j) notes that to establish a *prima facie* case of obviousness, three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference (or references when combined) must teach or suggest all the claim limitations. Also, the teaching or suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art and not based on applicant's disclosure. *In re Vaeck*, 947 F.2d 488, 20 USPQ2d 1438 (Fed. Cir. 1991). Without addressing the first two prongs of the test of obviousness, Applicants submit that the Official Action does not present a *prima facie* case of obviousness because both Nakamura and Hamalainen fail to disclose all the features of recited in Applicants' claimed invention.

The preceding comments are primarily directed to elements recited in new Claim 19. Applicants submit that Claims 7, 13 and 20 distinguish over the previously discussed references for substantially the same reasons.

Accordingly, in light of the previous discussion, Applicants respectfully submit that the present application is in condition for allowance and respectfully request an early and favorable action to that effect.

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